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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
DESIREE MACLEAN,)
)
Defendant.)

No. 11 CR-624 WHA

**STIPULATED NOTICE AND
PROPOSED ORDER**

Sentencing: February 14, 2012 at 2:00 p.m.*

Defendant Desiree Maclean entered a change of plea pursuant to a Rule 11(c)(1)(c) Plea Agreement before the Court on November 8, 2011. In that Agreement, the parties agreed that the adjusted offense level was 12. The parties have recently discovered, however, that the correct adjusted offense level was 13.

The reason for this was that the Plea Agreement contemplated a 3-level reduction in the offense level for acceptance of responsibility. However, the Probation Officer correctly alerted the parties that the reduction for acceptance of responsibility should be done after, and not before, the minor role reduction per U.S.S.G. § 1B1.1(a). The existing Plea Agreement, attached as Exhibit A hereto for the Court's convenience, provides for an Offense Level of 19, a 3 level

1 reduction for acceptance of responsibility (resulting in a level 16) and a 4 level reduction for
2 minimal role (resulting in an adjusted offense level of 12). The correct order, however, is for the
3 minimal role reduction to occur *before* the acceptance reduction. In other words, an Offense
4 Level of 19 with a minimal role reduction of 4 yields an offense level 15. The maximum
5 acceptance of responsibility points that may be awarded for an offense level that is less than 16
6 is 2 levels, not 3 levels. *See* U.S.S.G. § 3E1.1(b). Thus, the proper guidelines are an Offense
7 Level of 19, less 4 levels for the minimal role reduction (yielding a level 15) and less 2 levels for
8 acceptance of responsibility. The parties overlooked the correct order of reductions in the
9 existing Plea Agreement, and it makes a difference in this case because the Court may award a
10 maximum of 2 levels – as opposed to 3 levels – for acceptance of responsibility.

11 This notwithstanding, the parties continue to believe that a sentence at the low end of the
12 guideline range, for an adjusted offense level 13 instead of a 12, is an appropriate disposition
13 when taking into account all of the 18 U.S.C. Section 3553(a) factors. Furthermore, the parties
14 continue to believe that the defendant should be permitted to argue for a sentence of home
15 detention pursuant to U.S.S.G. § 5C1.1 in the event that she falls within Zone C of the guidelines
16 range. The parties intend to detail why that is so in their respective sentencing memoranda to the
17 Court. However, because the existing Plea Agreement contains an incorrect guidelines
18 calculation, the parties believe the best course of action is to amend the existing Plea Agreement
19 so as to reflect the correct adjusted offense level as a 13 rather than a 12.

20 With the Court's permission, the parties are prepared to either (1) execute a short
21 amendment to the existing Plea Agreement, or alternatively to (2) execute an entirely new Plea
22 Agreement. In either scenario the parties would lodge a draft with the Court in advance of the
23 next scheduled appearance, February 14, 2012, and would also be prepared for the Court to
24 conduct a brief voir dire with the defendant with respect to the revised Plea Agreement or
25 amendment thereto at the sentencing hearing. The parties would be prepared to proceed with
26 sentencing at the same hearing, scheduled for February 14, 2012. A proposed Order is attached
27 for the Court's consideration, as it is hoped that the Court can inform the parties which course of
28 action it deems appropriate in these circumstances.

1 Finally, the sentencing date and time in this matter is set for February 14, 2012 at 2:00
2 p.m. The undersigned Assistant U.S. Attorney will anticipates she will be in an ongoing murder
3 trial before Judge Richard Seeborg on that date, and the parties therefore respectfully request that
4 the matter be called last, or as late as possible, on the Court's calendar on February 14, 2012.

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6 IT IS SO STIPULATED.

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8 DATED: January 12, 2012

Respectfully submitted

9 MELINDA HAAG
United States Attorney

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12 /s/
KATHRYN HAUN
Assistant U.S. Attorney

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15 /s/
JOSHUA B. DAVIS
Counsel for Defendant

~~PROPOSED~~ ORDER

The parties have filed a stipulated notice of intent to amend the Plea Agreement in this case. Upon consideration of that notice, the Court hereby directs that, by February 10, 2012, the parties shall lodge with the Court:

[(A) An Amendment to the existing Plea Agreement _____]

[(B) A Revised Plea Agreement x]

[(C) Other _____]

Upon the filing of the above-mentioned document, the matter will proceed with sentencing as presently calendared [at 2:45 p.m.].

IT IS SO ORDERED.

DATED: January 17, 2012.



William Alsup
UNITED STATES DISTRICT JUDGE